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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/530,060	07/06/2000	KAZUAKI OHKUBO	YAO-4321US	7496

7590

11/01/2002

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EXAMINER

SHAY, DAVID M

ART UNIT

PAPER NUMBER

3739

DATE MAILED: 11/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



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This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

## OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on July 17, 2002
- ☒ This action is FINAL.

- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

- ☒ Claim(s) 1, 3, 4, 17, 18, 20, 32, 33, 35-37, 39-70, + 72-74 is/are pending in the application.  
Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1, 3, 4, 17, 19, 20, 32, 33, 35-37, 39-70, + 72-74 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 17, 19, and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 does not further limit claim 1 as radiation in the range 600-1100 nm fulfils the recitation therein. Claims 19 and 20 are substantial duplicates of claim 4.

Claims 1, 3, 4, 17, 19, 20, 32, 34, 37, 39, and 56 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by the sun.

The sun illuminates light of a color which does not cause discomfort and which has the various minimum requirements for the energy in the wavelength ranges claimed.

Claims 1, 17, 33, 36, 37, 39-43, 58, and 61 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by a 5 milliwatt Helium Neon laser.

Helium Neon lasers emit light at 632 nm and no light in the 1100 nm to 2.5 micron range. They are pumped by an electrical discharge.

Claims 1, 17, 35-37, 39, 52-58 and 68-70 are rejected under 35 U.S.C. 102(b) as being already anticipated by Diamantopoulos et al.

See column 6, line 1 - column 10, line 62.

Claims 1, 17, 36, 37, and 39-47 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Hashimoto et al.

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Claims 1, 17, 36, 37, 39 and 48-51 are rejected under 35 U.S.C. 102(b) as being already anticipated by Shimizu et al.

Claims 1, 17, and 72-74 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by a person viewing themselves in a mirror outdoors.

The sun has the properties set forth above. The mirror will reflect and therefore irradiate the sunlight and display e.g. an image of the person looking in the mirror.

Claims 1, 17, and 56-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hashimoto et al in combination with Diamantopoulos et al. Hashimoto et al teach a light source with the desired output wavelength. Diamantopoulos et al teach the desirability of providing the power and pulse repetition for biostimulation. It would have been obvious to the artisan of ordinary skill to provide the particular wavelengths and repetition rates, since these are useful for biostimulation, thus producing a device such as claimed.

Claims 1, 17, 56-59 and 65-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimizu et al in combination with Diamantopoulos et al. Shimizu et al teach an incandescent light source. Diamantopoulos et al provide the teachings set forth above. It would have been obvious to the artisan of ordinary skill to employ the wavelength and pulse rates claimed, since these are useful for biostimulation, thus producing a device such as claimed.

Applicants arguments concerning the prior art have been fully considered, but are not convincing. While applicant does not specifically enumerate which of the "Radiation Features"

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are not possessed by the references set forth by the examiner, the examiner will attempt to explain the rejections.

First considering the sun, it is a broad band radiator, which clearly radiates light between 600 nm and 2.5 microns. The irradiance is clearly greater than  $0.1 \text{ w/m}^2$  in the 600 nm - 1100 nm range, since this is barely above the threshold for visual perception, and since red colors (around 632 nm) can be visually perceived, they are clearly being irradiated by a source of greater power than this. As can be seen from the attached web page print out, the sun radiates as a black body with a spectral curve which has the claimed irradiative qualities in term of wavelength and the relative ratios thereof. It is noted that applicant has included an intended use phrase in "Radiation Feature" (i), while this is not properly a limitation in the claims as currently constructed, the examiner will address this apparent intended limitation in case applicant has intended to submit this term as a proper limitation in the claims. Applicants attention is respectfully invited to the instant specification in general and to page 2 thereof in particular, wherein applicant explains that the instant invention is intended to provide biostimulation to people who, due to modern life, do not spend enough time in the sun. It is further noted that on page 3 of the instant disclosure are mentioned several reference wherein only red light exposure is used to enhance biostimulation.

In view of the aforementioned arguments set forth by the examiner the other references, which either produce illumination or specifically state the wattage at which they operate, applicants vague assertions that the references do not produce the claimed "Radiation Features"

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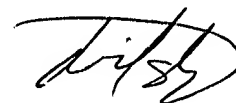
without reference to any particular aspect of any "Radiation Feature" being absent from any particular reference are not convincing.

Applicant's arguments filed July 17, 2002 have been fully considered but they are not persuasive.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication should be directed to David Shay at telephone number (703) 308-2215.



DAVID M. SHAY  
PRIMARY EXAMINER  
GROUP 330

David Shay:lf  
October 25, 2002